

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

ANTHONY D. MILLER	§	
VS.	§	CIVIL ACTION NO. 1:09-CV-804
JODY UPTON	§	

MEMORANDUM ORDER PARTIALLY ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Anthony D. Miller, an inmate confined at FCC Beaumont, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the petition for writ of habeas corpus be denied.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties. Petitioner did, however, file a motion for dismissal. Petitioner has an absolute right to voluntarily dismiss his claims. Petitioner also filed correspondence from opposing counsel which states respondent has no objections to petitioner withdrawing his petition for writ of habeas corpus. As such, this action is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **PARTIALLY ADOPTED** to the extent it recommends dismissal. A final judgment will be entered in this case in accordance with the

Magistrate Judge's recommendations.

**SIGNED** this the **14** day of **September, 2012**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield  
United States District Judge